

**General Terms and Conditions of Delivery**

Your purchase order is accepted subject to the following terms and conditions.

**1. General Provisions**

- 1.1 The terms and conditions contained herein constitute the entire agreement between you ("Buyer") and Akustica, Inc ("Seller") with respect to the transaction covered by your purchase order as confirmed by Seller.
- 1.2 No modification or waiver of any of the terms and conditions contained herein and no additional or different terms or conditions shall be effective unless agreed to in a single writing signed by both parties. The following conditions shall also apply if we unconditionally perform delivery to the Buyer, notwithstanding our knowledge of Buyer's additional or different terms or conditions. **THIS ACCEPTANCE MAY CONTAIN ADDITIONAL OR DIFFERENT TERMS FROM THOSE CONTAINED IN YOUR PURCHASE ORDER; IF SO, THIS ACCEPTANCE IS EXPRESSLY CONDITIONAL ON YOUR ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS. YOUR ACCEPTANCE OF THE PRODUCTS SOLD HEREUNDER ("Products") SHALL CONSTITUTE ACCEPTANCE OF THE ADDITIONAL OR DIFFERENT TERMS.**
- 1.3 No oral agreement, course of performance or other means other than such written agreement signed by both parties expressly providing for such waiver shall be deemed to waive the terms of this Section.

**2. Title and Risk of Loss.** Title and risk of loss shall pass to Buyer including payment of transportation and insurance cost at Seller's door.

**3. Prices and Taxes**

- 3.1 Unless otherwise agreed to in writing, prices shall be deemed to be ex-works "EXW" (Incoterms 2000).
- 3.2 Invoices are calculated on the basis of the list prices in effect on the date of delivery plus value-added tax, if applicable.
- 3.3 We reserve the right to adjust our prices appropriately in the event of changes in volume forecasts, economics or exchange rates as applicable, including, without limitation, wage cost changes or changes in the price of materials. Cost estimates are not binding and subject to change except as otherwise expressly agreed.
- 3.4 Spare parts and products which have been repaired shall be shipped using a flat rate for shipping and packaging plus the charge for the service rendered by us, except in warranty cases.
- 3.5 Buyer may not change prices or any other conditions without Seller's express written consent.

**4. Delivery, Delivery Dates, Default**

- 4.1 Seller's obligation with respect to delivery dates shall be to use all reasonable efforts to meet the same. Sellers shall have no liability for delays to the extent caused by Buyer, including without limitation, failure to deliver all required materials, documentation, approvals, examinations and clearances in a timely manner and non-compliance with payment terms agreed upon. In such event, the delivery dates shall be reasonably extended; this shall not apply if Seller is solely responsible for the delay. Seller may deliver partial shipments and corresponding invoices except in cases where such shipments create an unreasonable hardship for the Buyer. Upon Buyer's request, Seller shall insure shipments against customary transport risks at Buyer's cost.
- 4.2 In the event Seller fails to meet the delivery dates, Buyer shall immediately notify Seller (upon Seller's request) of its intent to accept or reject delayed delivery of the Products.
- 4.3 If Buyer requests that delivery be delayed for longer than one month after notification that the Products are ready for shipment, Seller may charge Buyer a storage fee in an amount of 0.5% of the price of the Products for each calendar month of storage, but not exceeding an aggregate amount of 5% of the price of the Products. Said storage fee may be adjusted upward or downward upon proof of higher or lower storage costs, as the case may be. Notwithstanding the foregoing, neither party waives any rights to recover costs resulting from delayed acceptance of Products.
- 4.4 Buyer may not refuse delivery on the basis of minor defects.

**5. Customs Clearance.** Buyer shall be the named importer of record and shall arrange for payment of duties and other importation charges, as well as performance and payment of administrative matters connected with the passing of the Products through customs.

**6. Cancellations and Changes.** No cancellations or changes to the purchase order shall be effective without Seller's express written consent. Without such consent, a cancellation or change to the purchase order shall constitute a material breach of this Agreement entitling Seller to all remedies available by law or equity.

- 6.1 The Buyer may cancel delivery of any or all Products ordered pursuant to an accepted purchase order, at no cost, provided that The Buyer furnishes Akustica with a written cancellation notice at least thirty (30) calendar days prior to the scheduled shipment date.
- 6.2 The Buyer can request up to two separate deferrals in the scheduled shipment date; provided that the deferrals must not exceed in aggregate 3 months from the original shipment date. No deferrals will be granted within thirty (30) calendar days of scheduled ship date.

**7. Force Majeure.** In the event either party is unable to fully perform its obligations hereunder (except for Buyer's obligation to pay for Products ordered) due to events beyond its reasonable control including but not limited to acts of God, action by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lock-outs, strikes, slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order, that party shall be relieved of its obligations to the extent it is unable to perform. Timely notice of such inability to perform shall be given to the other party.

**8. Warranty**

8.1 Seller makes no warranties, express or implied with respect to the Products except as otherwise stated in this Section. Buyer shall not extend any warranty nor make any representations, written or oral, regarding the Products in addition to those contained herein.

8.2 Unless otherwise provided in Seller's quotation, Seller warrants the Products to be free from defects in design, material and workmanship (to the extent that Seller furnishes the design and materials) in accordance with the following: For a period of 12 months after delivery of the Products to Seller, Seller shall provide free of charge to Buyer repair or replacement Products or, at Seller's option, credit in a fair amount not to exceed the purchase price of the Products which prove to be defective within this warranty period; provided, however, that Buyer has returned to Seller 100% or a statistically relevant share, as mutually agreed upon, of any Product claimed to be defective. This warranty is limited to the Buyer only and is not transferable. Repaired and replacements products shall assume the identity of the original for purpose of this warranty and this warranty shall not be extended with respect to such repaired or replacement products.

8.3 Buyer shall submit all warranty claims which are recognizable at the time of delivery no later than 15 days after receipt of the Products. For all other warranty claims, Buyer shall notify Seller in writing upon discovery thereof. Such notification shall include adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment. Timely delivery of said notification shall be determined by Seller's date of receipt. Seller reserves the right to request other reasonable evidence of and impose other reasonable requirements for submission of a warranty claim. Buyer's failure to comply with such requirements shall result in the denial of the claim. Buyer shall be liable to Seller for all costs and expenses related to frivolous warranty claims.

8.4 Specifically excluded from this warranty are (a) minor quality deviations or deviations resulting in minor impairment on the use of the Product, (b) failures resulting from ordinary wear and tear, misuse, abuse, neglect, damage, unauthorized repair or alteration, installation of parts not supplied by Seller, improper operation, storage, erection, installation or handling, or similar circumstances, and (c) non-reproducible software errors.

**8.5 THE WARRANTY SET FORTH HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES SET FORTH IN THIS WARRANTY REPRESENTS BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY**

**9. Patents/Trademarks**

9.1 Seller warrants that the Products shall be free of rights claims of infringement of any patents or trademarks published by the US Patent and Trademark Office or by the patent/trademark offices of the European Patent Office, Federal Republic of Germany, France, Great Britain, Austria or Japan; provided, however, that this warranty shall not apply to claims of infringement to the extent that any Products are (a) manufactured to Buyer's specifications, (b) used in combination with a product not purchased from Seller in a manner which infringes a patent covering the combination, or (c) used in a manner not reasonably anticipated by Seller.

9.2 Seller's obligation under this Section is conditioned upon the Buyer giving Seller prompt written notice of any infringement claims and risks of infringement and co-operating fully with respect to the defense of such claim. Upon Seller's request, Buyer shall turn over to Seller control of the defense including settlement and/or litigation of such claim.

9.3 Seller shall be entitled, at its discretion, to obtain a right of use or license on Buyer's behalf for the Product which allegedly infringement a patent /trademark right, to modify the Product such that it is no longer infringing or to replace the Product with an equivalent product which is not infringing.

**10. Remedies and Limitation of Remedies**

10.1 Seller's rights and remedies set forth herein are in addition to any legal or equitable right or remedy available to Seller. No waiver of any of Seller's rights or remedies shall be effective without Seller's express written consent. Seller shall be liable only for payment of actual, direct damages ("Damages") arising out of Seller's (i) wilful misconduct or gross negligence; (ii) wilful misconduct or negligence resulting in death or physical injury; (iii) assumption of a quality guarantee; and (iv) wilful or negligent breach of a material term of this Agreement.

- 10.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in cases arising out of wilful misconduct, gross negligence, the assumption of a quality guarantee, or in cases resulting in death or physical injury.
- 10.3 Nothing in this Section shall affect the burden of proof required to the detriment of the Buyer.
- 10.4 Akustica shall not be liable for any indirect, consequential, exemplary, special, incidental or punitive damages, including, without limitation, loss of use, loss of business, revenue, profit or goodwill, downtime costs, damage to associated equipment, cost of substitute goods, facilities or services, or claims of Buyer's customers for such damages, or other commercial or economic damages or costs, that may arise out of, in conjunction with or relate to, the failure of any Products sold by Akustica, under any legal theory or cause of action, including, without limitation, tort, contract, warranty, strict liability or federal, state or local statute, ordinance or regulation. In no event shall Akustica's liability exceed the price of the Products which give rise to the claim.
- 11. Product Usage Restrictions**
- 11.1 Engineering Samples are marked with an asterisk (\*) or (e). Samples may vary from the valid technical specifications of the product series contained in a product data sheet. They are therefore not intended or fit for resale to third parties or for use in end products. Their sole purpose is internal client testing. The testing of an engineering sample may in no way replace the testing of a product series. Seller assumes no liability for the use of engineering samples. The Buyer shall indemnify Seller from all claims arising from the use of engineering samples.
- 11.2 Seller's products are developed for the consumer goods industry. They may only be used within the parameters of their respective product data sheet. They are not fit for use in life-sustaining or security sensitive systems. Security sensitive systems are those for which a malfunction is expected to lead to bodily harm or significant property damage. In addition, they are not fit for use in products which interact with motor vehicle systems.
- 11.3 The resale and/or use of products are at the Buyer's own risk and his own responsibility. The examination of fitness for the intended use is the sole responsibility of the Buyer.
- 11.4 The Buyer shall indemnify Seller from all third party claims arising from any product use not covered by the parameters of this product data sheet or not approved by Seller and reimburse Seller for all costs in connection with such claims.
- 11.5 The Buyer must monitor the market for the purchased products, particularly with regard to product safety, and inform Seller without delay of all security relevant incidents.
- 11.6 With respect to any examples or hints given in a product data sheet, any typical values stated in the data sheet and/or any information regarding the application of the device, Seller hereby disclaims any and all warranties and liabilities of any kind, including without limitation warranties of non-infringement of intellectual property rights or copyrights of any third party. The information given in the data sheet shall in no event be regarded as a guarantee of conditions or characteristics. They are provided for illustrative purposes only and no evaluation regarding infringement of intellectual property rights or copyrights or regarding functionality, performance or error has been made.
- 12. Retention of Title**
- 12.1 Seller retains title to the products delivered pending full performance of all claims to which we are entitled on the basis of the business relationship now and in future.
- 12.2 The Buyer is entitled to process our products or connect them with other products within the due course of the Buyer's business. By way of security for our claims set forth in clause 10.1 above we shall acquire joint ownership in the products created as a result of such processing or connection. The Buyer hereby transfers such joint ownership to us now already. As an ancillary contractual obligation the Buyer shall store free of charge the goods to which we have retained title. The amount of our joint ownership share shall be determined by the ratio between the value of our product and the value of the product created by processing or connection at the time of such processing or connection.
- 12.3 The Buyer shall be entitled to sell the products in the normal course of business against cash payment or subject to retention of title. The Buyer assigns to us now already all claims in full together with all ancillary rights to which the Buyer is entitled from the further sale of our product, irrespective of whether our product has been further processed or not. The assigned claims act as security for our claims set forth in clause 12.1 above. The Buyer is entitled to collect the claims assigned. We may revoke the rights of the Buyer as set forth in this clause 12.3 if the Buyer fails to duly comply with its contractual duties with respect to us, in particular if the Buyer is in default in payment. These rights shall also lapse without any express revocation if the Buyer suspends payments for more than a merely temporary period.
- 12.4 At our request the Buyer shall advise us immediately in writing of the parties to whom the products to which we have retained title or joint title have been sold and of the claims to which the Buyer is entitled on the basis of such sale and shall issue to us deeds officially authenticated at the Buyer's expense relating to the assignment of the claims.
- 12.5 The Buyer is not entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The Buyer must notify us immediately of any attachments of or other impairments to the rights of products or claims belonging to us either in whole or in part. The Buyer shall bear the entire costs which have to be expended in order to cancel the attachment of our retained property or security by third parties and to re-create the product insofar as it is impossible to retrieve it from the third parties.
- 12.6 In case of default in payment or any other culpable violation of material contractual obligations by the Buyer we have the right to demand the return of products to which we have retained title or in which we hold an equitable lien. If we make use of such right, this shall only constitute rescission of the contract if we expressly declare that the contract is being rescinded.
- 12.7 If the Buyer files a petition for insolvency proceedings to be commenced we are entitled to rescind the contract and demand the immediate return of the goods delivered.
- 12.8 If the value of the security existing for us exceeds the amount of our claims by a total of over 10 %, we shall release security to this extent at our discretion at the Buyer's request.
- 13. Confidentiality.** Any and all information concerning the Products or the transaction covered hereunder which Akustica discloses to Buyer, or which Buyer otherwise obtains knowledge of hereunder, remains the exclusive property of Akustica and shall not be made available to third parties without Akustica's express written consent. Buyer shall have no right whatsoever to such information other than to use it for evaluation for the purpose of the transaction covered hereunder. Akustica will not disclose information submitted to it by Buyer which is confidential and proprietary to Buyer and clearly designated as such without Buyer's consent.
- 14. Payment Terms.**
- 14.1 Except as otherwise agreed in writing, payment shall be effected within 30 days of the invoice date without any deductions whatsoever.
- 14.2 Unless otherwise agreed upon, all payments shall be made by wire transfer to the following Seller's account and each party shall be responsible for wire transfer fees charged by their respective banks:
- Akustica, Inc.  
Silicon Valley Bank  
One Newton Executive Park  
Santa Clara, CA 95054  
USA
- |                |            |
|----------------|------------|
| Account Number | 3300388514 |
| Routing Number | 121140399  |
| Swift code     | SVBKUS6S   |
- 14.3 Seller reserves the right to alter or suspend credit terms, require C.O.D. or advance payment, whenever Seller has reasonable doubt as to Buyer's credit worthiness. If Buyer becomes delinquent in payment or refuses to accept C.O.D. shipments, Seller shall have the right, in addition to any other right it may have, to cancel any order of Buyer's, withhold further deliveries, and declare all unpaid amounts for Products previously delivered immediately due and payable. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Amounts past due may be subject to an interest charge of 1.5% per month. All costs and expenses incurred by Seller as a result of non-payment or delinquent payment by Buyer, including collection costs, interest, and reasonable attorneys' fees, shall be paid by Buyer.
- 15. Set-Off.** Buyer is not entitled to set-off any amounts due or allegedly due from Seller to Buyer from its debts towards Seller.
- 16. Assignment.** Neither party shall be entitled to assign its rights or obligations hereunder without the other party's prior written consent. A corporate reorganization, which does not result in a change of control or beneficial owner, shall not be deemed an assignment.
- 17. Relationship of the Parties.** Buyer and Seller are independent contracting parties. Nothing hereunder or in the course of performance of this agreement shall grant either party the authority to create or assume an obligation on behalf or in the name of the other party, or shall be deemed to create the relationship of joint venture, partnership, association or employment between the parties.
- 18. Severability.** If any provision hereof is invalid or unenforceable, it shall be reformed or deleted, but only to the extent necessary to make it valid or enforceable, and the remaining provisions hereof shall remain in full force and effect.
- 19. Arbitration.** The parties shall submit all disputes arising out of or relating to this Agreement or the breach, alleged breach or interpretation thereof, including disputes arising after its termination, to binding arbitration in accordance with the rules for commercial arbitration of the American Arbitration Association (AAA). The arbitration panel shall consist of 3 arbitrators appointed in accordance with said Rules. The place of arbitration shall be in Pittsburgh, Pennsylvania. The language of the proceedings shall be in English. Under no circumstances shall the arbitrators have any authority to award punitive damages.
- 20. Applicable Law.** This Agreement shall be deemed to have been negotiated, entered into and fully performed in the Commonwealth of Pennsylvania, and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its choice of law rules or the United Nations Convention on the International Sale of Goods, it being the intent of the parties that the internal laws and forum of the Commonwealth of Pennsylvania shall govern any and all disputes arising out of or relating to this Agreement. The United Nations Convention on the International Sale of Goods shall not apply. By execution of this Agreement, the parties hereto consent to the exclusive jurisdiction of the courts of Allegheny County, Pennsylvania, consent to service of process by mail for purpose of instituting legal proceedings, and agree that the provision was separately negotiated and material to this Agreement.